

### REMARKS

Claims 1, 7, 12, 27 and 32 are amended herein. The amendments to Claims 1, 12, 27 and 32 are supported by the specification, for example, at page 8, lines 28 to 30, and Example 1; and by original Claims 6 and 31. The amendment to Claim 7 is for proper dependency in view of the cancellation of Claim 6. Accordingly, the amendments to the claims do not add new matter.

Claims 6, 13, 14, 21-26 and 31 are canceled herein without prejudice to, or disclaimer of, the subject matter contained therein. Applicants maintain that the cancellation of a claim makes no admission as to its patentability and reserve the right to pursue the subject matter of the canceled claim in this or any other patent application.

New Claim 33 is added. Support for new Claim 33 is found in the specification, for example, at page 8, lines 31 to 34. Accordingly, new Claim 33 does not add new matter.

Upon entry of the amendments, Claims 1, 3-5, 7, 8, 10, 12, 27-30, 32 and 33 are pending.

### Claim Rejections under 35 U.S.C. §103

1. Claims 1, 3-6, 10, 12, 13, 14, 21-24, 27-30 and 32 are rejected under 35 U.S.C. §103 as being obvious over Kuriu (WO 00/56548) in view of Yamamoto (JP 11-199741).

The claims are non-obvious over the cited references because no combination of the references teaches all elements of the presently pending claims.

Kuriu describes a multilayered polyamide film with improved pinhole resistance. Kuriu for example at Example 1 describes a multilayer film comprising polyamide resin (a composition consisting of Ny-6 and modified EVA)/EVOH/polyamide resin (a composition consisting of Ny-6 and modified EVA). Kuriu mentions, in column 2, line 39, that antioxidants may also be contained.

However, Kuriu fails to teach a “polyamide layer” further comprising “a modified ethylene-vinyl acetate copolymer, an ethylene-methacrylic acid copolymer ionomer, and an antioxidant” in addition to an aliphatic polyamide and aromatic polyamide.

Yamamoto describes a resin composition containing a polyamide layer, alcohol-based compound, and EVOH. However, Yamamoto nowhere teaches that the polyamide layer contains all of the following: an “aliphatic polyamide, aromatic polyamide, a modified ethylene-vinyl

acetate copolymer, an ethylene-methacrylic acid copolymer ionomer, and an antioxidant.”

Furthermore, Yamamoto nowhere teaches a multilayer film to which a polyamide layer is added.

Accordingly, Kuriu and Yamamoto cannot be combined in such a way as to teach all elements of the present claims. As such, the claims are non-obvious over Kuriu and Yamamoto.

Furthermore, Applicants have found that when an antioxidant is also present in the polyamide layer of the invention, haze suppression during retort is improved. *See Specification at Examples and Comparative Examples.* This improved property would not be expected in view of the cited references. As such, the claims are further non-obvious over the cited references.

2. Claims 6-8, 12 and 24-26 are rejected as being obvious over Kuriu in view of Yamamoto and Matsui (JP 2002-248721).

The claims are non-obvious over the cited references because Matsui teaches away from the present claims, and because no combination of the cited references teaches all elements of the claims.

Matsui teaches a laminate film with a polyamide layer containing an antioxidant. Matsui states that this laminate film is subject to weakening when the film is subjected to an air-containing retort treatment. Matsui teaches that deviation from narrow specifications of the laminate causes an undesirable result: the strength of the film subjected to an air-containing retort treatment is significantly deteriorated, or the heat-sealing properties of the film are poor. For example, in paragraphs [0032] and [0039], Matsui states that an adhesive resin (Y) layer is always present so that a polyamide resin (X) layer is firmly adhered to a thermoplastic resin (Z) layer. Specifically, Matsui at paragraph [0039] states:

Let the ratio of the thickness of each class which constitutes a laminated film be a 90 to 10% of a polyamide resin (X) layer, the adhesive resin (Y) layer 1 - [ 50% and 10 to 90% of (Z) thermoplastics (Z) layer ] ratio. If it shifts from this ratio range, the strength deterioration of the film after carrying out pneumaticity retorting is remarkable, or heat-sealing nature does not have it. [ bad preferred ] (emphasis added).

The above discloses that three layers (X)/(Y)/(Z) each having a predetermined thickness are required in Matsui's laminated film.

In contrast, the multilayer film of the present claims does not include an adhesive layer. Accordingly, Matsui teaches away from the present claims, which do not include an adhesive layer. As such, Matsui is evidence of the non-obviousness of the present claims.

Further, Matsui nowhere teaches or suggests that a polyamide layer contains all of an “aliphatic polyamide, aromatic polyamide, a modified ethylene-vinyl acetate copolymer, an ethylene-methacrylic acid copolymer ionomer, and an antioxidant.” As such, no combination of the cited references teaches all elements of the claims.

Furthermore, Applicants have found that when an antioxidant is also present in the polyamide layer of the invention, haze suppression during retort is improved. *See Specification* at Examples and Comparative Examples. This improved property would not be expected in view of the cited references. As such, the claims are further non-obvious over the cited references.

Based on the above, Applicants submit that the claims are non-obvious over Kuriu, Yamamoto, and Matsui.

**3.** Claim 31 is rejected as being obvious over Kuriu in view of Yamamoto and Toyozumi (JP 2002-338770).

Claim 31 is non-obvious over the cited references because Toyozumi teaches away from Claim 31, and because no reason is provided by the references for arriving at the film of Claim 31.

Toyozumi describes a resin composition containing saponified ethylene-vinyl acetate copolymer (A), polyamide (B), and ethylene-methacrylic acid copolymer ionomer (C), and a laminate thereof.

However, Toyozumi requires that the resultant laminate must comprise a thermoplastic resin on at least one side of the above-described film. *Toyozumi* at paragraphs [0038] to [0048]. The present claims do not include such a thermoplastic resin-containing layer. Accordingly, Toyozumi teaches away from the present claims. As such, Toyozumi is evidence of the non-obviousness of the present claims.

Furthermore, the resin composition described by Toyozumi is characterized in that ethylene-methacrylic acid copolymer ionomer (C) is added to a blend of EVOH and polyamide because this blend has poor gas barrier properties, pinhole resistance, and the like. However, in the present claims, although the EVOH layer contains EVOH and polyamide, the polyamide layer

does not necessarily contain EVOH. Consequently, there is no reason based on the teachings of Toyozumi to add ionomer (C) to the polyamide layer of the present claims, which does not necessarily contain EVOH. Accordingly, the claims are further non-obvious over the cited references.

Based on the above, Applicants submit that the claims are non-obvious over Kuriu, Yamamoto, and Toyozumi.

**4.** Claim 32 is rejected as being obvious over Kuriu in view of Yamamoto and Tanaka (JP 2002-172742).

Claim 32 is non-obvious over the cited references because Tanaka teaches away from the claim.

Tanaka describes a laminated film with EVOH (layer X), aliphatic polyamide (layer Y), and a layer Z comprising 20 to 80 mass% of a xylylene-based polyamide and 20 to 80 mass% of an aliphatic polyamide. In particular, Tanaka teaches that when the amount of xylylene-based polyamide contained in the layer Z is less than 20%, the effect of the resulting film to improve flavor retention properties is insufficient; and when the amount exceeds 80%, interlayer adhesion between the xylylene-based polyamide layer and the aliphatic polyamide layer is reduced. For example, Tanaka at paragraph [0012] states as follows:

In this invention, Z layer needs to comprise the xylylene system polyamide 20 - 80 mass %, and 20 to aliphatic polyamide 80 mass %. The smell retaining property improvement effect of the film obtained as the content of xylylene system polyamide is less than 20% is not enough, and if it exceeds 80%, layer indirect arrival power with an aliphatic polyamide layer will decline. (emphasis added).

Thus, as seen from the above quote, Tanaka teaches that the resulting film is unsatisfactory when the amount of xylylene-based polyamide is less than 20 mass%. Consequently, Tanaka teaches away from the 2 to 10 wt% of aromatic polyamide of Claim 32. As such, Tanaka is evidence of the non-obviousness of the Claim 32.

Based on the above, Applicants submit that Claim 32 is non-obvious over Kuriu, Yamamoto, and Tanaka.

5. Claims 27 is rejected as being obvious over Kuriu in view of Yamamoto and Shibuya (JP 06-345919).

Claim 27 is non-obvious over the cited references because no combination of the references teaches all elements of Claim 27.

Kuriu describes a multilayered polyamide film with improved pinhole resistance. Kuriu for example at Example 1 describes a multilayer film comprising polyamide resin (a composition consisting of Ny-6 and modified EVA)/EVOH/polyamide resin (a composition consisting of Ny-6 and modified EVA). Kuriu mentions, in column 2, line 39, that antioxidants may also be contained.

However, Kuriu fails to teach a “polyamide layer” further comprising “a modified ethylene-vinyl acetate copolymer, an ethylene-methacrylic acid copolymer ionomer, and an antioxidant” in addition to an aliphatic polyamide and aromatic polyamide.

Yamamoto describes a resin composition containing a polyamide layer, alcohol-based compound, and EVOH. However, Yamamoto nowhere teaches that the polyamide layer contains all of the following: an “aliphatic polyamide, aromatic polyamide, a modified ethylene-vinyl acetate copolymer, an ethylene-methacrylic acid copolymer ionomer, and an antioxidant.” Furthermore, Yamamoto nowhere teaches a multilayer film to which a polyamide layer is added.

Accordingly, Kuriu and Yamamoto cannot be combined in such a way as to teach all elements of Claim 27.

Shibuya does not add that which is missing in Kuriu and Yamamoto. Shibuya teaches a resin composition prepared by compounding saponified ethylene-vinyl acetate copolymer containing polyamide and hindered phenol compound, and an alkaline earth metal salt of an aliphatic carboxylic acid. Shibuya’s composition is coextruded with a polyamide resin to give a laminate having polyamide layers on both sides. However, Shibuya nowhere teaches that the polyamide layer contains all of the following: an “aliphatic polyamide, aromatic polyamide, a modified ethylene-vinyl acetate copolymer, an ethylene-methacrylic acid copolymer ionomer, and an antioxidant.”

Accordingly, Kuriu and Yamamoto cannot be combined with Shibuya in such a way as to teach all elements of Claim 27. As such, Claim 27 is non-obvious over Kuriu, Yamamoto and Shibuya.

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Furthermore, Applicants have found that when an antioxidant is also present in the polyamide layer of the invention, haze suppression during retort is improved. *See Specification* at Examples and Comparative Examples. This improved property would not be expected in view of the cited references. As such, Claim 27 is further non-obvious over the cited references.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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### **CONCLUSION**

In view of the above, Applicants respectfully maintain that claims are patentable and request that they be passed to issue. Applicants invite the Examiner to call the undersigned if any remaining issues might be resolved by telephone.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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